

03/14/2007 WED 12:36 FAX 12489888363 ---- USPTO

MAR 14 2007

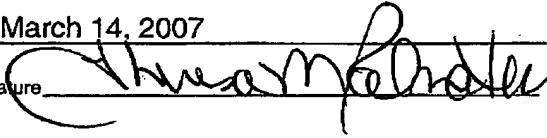
Z001/007

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 60,469-250; OT-5166
CERTIFICATE OF FACSIMILE I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300. on <u>March 14, 2007</u> Signature  Typed or printed name <u>Theresa M. Palmateer</u>	Application Number 10/564,873	Filed 01/17/2006
	First Named Inventor Richard Fargo	
	Art Unit 3654	Examiner Kruer, Stefan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- attorney or agent of record.
Registration number 37,139
- attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



Signature

David J. Gaskey

Typed or printed name

(248) 988-8360

Telephone number

March 14, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
-------------------------------------	---

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MAR 14 2007

60,469-250
OT-5166

BEST AVAILABLE COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Fargo, Richard
 Serial Number: 10/564,873
 Filed: 01/17/2006
 Group Art Unit: 3654
 Examiner: Kruer, Stefan
 Title: SHOCK ABSORBING HITCH

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

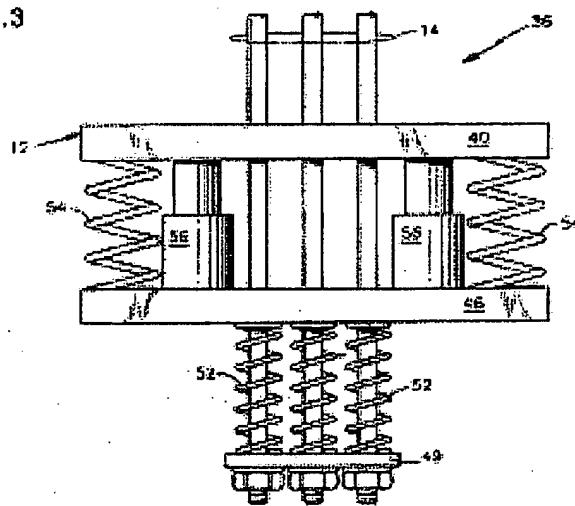
Dear Sir:

Applicant submits this Request for Pre-Appeal Brief Review because there is no *prima facie* case of anticipation or obviousness against any of Applicant's claims.

The rejection under 35 U.S.C. §102(b) of claims 1-7, 9, 12-13, 15 and 20 must be withdrawn.

The Examiner relies upon the *Fuller, et al.* reference (U.S. Patent No. 5,750,945). For convenience, Figure 3 of the *Fuller, et al.* reference is reproduced here.

FIG. 3



60,469-250
OT-5166

The Examiner suggests that the *Fuller, et al.* reference discloses a mounting plate 49 that moves against a first bias 52 of a termination responsive to a tension on a load bearing member 14 that is below a selected threshold and the portion 49 moves against a second, passive bias 54 of the termination responsive to a tension that exceeds the threshold. (See, e.g., page 2 of the Final Office Action).

Basically, the Examiner contends that the *Fuller, et al.* reference teaches that the springs 52 will compress when tension on the ropes 14 is below a selected threshold and then the springs 54 will compress when the tension exceeds that threshold. The problem with the Examiner's position is that the *Fuller, et al.* reference does not in any way disclose that. The only description regarding the springs 52 and 54 in the *Fuller, et al.* reference is found in column 4, lines 41-58:

Positioned between the mounting plates 49 and the hitch plate 46 are a plurality of passive hitch spring elements 52. In the illustrated example, the passive hitch spring elements 52 positioned between the hitch plate 46 and mounting plates 49 each have one of the steel ropes which make up the main rope 14 passing therethrough. The passive hitch spring elements 52 provide even tension in the steel ropes which make up the main rope.

Positioned between the hitch plate 46 and the support plate 40 are a pair of passive hitch spring elements 54 and a pair of active elements 56 which together with the hitch plate 46 form the active elevator hitch of the present invention. The passive hitch spring elements 54 provide partial support for the elevator car so that the active elements 56 do not need to support the static load of the elevator car. However, depending on the active elements 56 used to implement the active elevator hitch of the present invention, the passive hitch spring elements 54 may be eliminated.

and column 8, lines 20-26:

The active hitch assembly 36 is illustrated in Fig. 3 as including passive damping elements connected both in series (passive hitch spring elements 52) and in parallel (passive hitch spring elements 54) with the active elements 56. However, the invention will work equally as well with passive damping elements connected in series and/or in parallel with the active elements 56.

There is no other description of the springs 52 or 54 within the *Fuller, et al.* reference. It is clear from the reference itself that there is nothing in it to suggest that the springs 52 and 54 operate in the manner proposed by the Examiner. The reference simply does not support the Examiner's interpretation. The springs 52 and 54 would have to operate in the manner proposed

60,469-250
OT-5166

by the Examiner in order to even begin to establish a *prima facie* case of anticipation. The Examiner's position is not supported by the reference and there is no *prima facie* case of anticipation.

The rejections under 35 U.S.C. §103 must be withdrawn.

There is no *prima facie* case of obviousness against any of Applicant's claims. The Examiner relies upon the same improper interpretation of the *Fuller, et al.* reference when attempting to establish a *prima facie* case of obviousness. As already explained, the *Fuller, et al.* reference does not contain anything to support the Examiner's position. There is no *prima facie* case of obviousness for at least the reason that the Examiner's proposed combinations would not provide the result that the Examiner suggests.

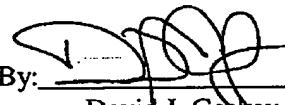
Additionally, the Examiner's proposed combination of the *Fuller, et al.* reference and the *O'Donnell, et al.* reference cannot be made. The Examiner proposes to take some of the elements of the arrangement in the *Fuller, et al.* reference away from the car location and place them on a counterweight. The *Fuller, et al.* reference, however, discloses an arrangement that is particularly designed for use with an elevator car to address the elevator motion control strategy explained in that reference. If one were to remove the termination from the car and place it on the counterweight, the intended result of the *Fuller, et al.* reference could not be achieved. Whenever a proposed modification to a reference defeats the intended operation of what is disclosed in that reference, the modification cannot be made and there is no *prima facie* case of obviousness. (See, e.g., MPEP §2143.01(V) and (VI)). Here, the Examiner's proposed modification to the *Fuller, et al.* reference using the *O'Donnell, et al.* reference cannot be made.

Additionally, the Examiner's proposed modification of the *Fuller, et al.* reference in view of the *Wagatsuma, et al.* reference cannot be made. Again, the *Fuller, et al.* reference locates components on an elevator car to achieve a desired elevator_car_motion_control. If one were to remove any of those components and place them in a fixed position relative to a machine in a machine room, for example, the intended result of the *Fuller, et al.* reference would not be achievable. Such a modification to a reference cannot be made when attempting to establish a *prima facie* case of obviousness. (See, e.g., MPEP §2143.01(V) and (VI)).

60,469-250
OT-5166

In a case like this where this is no *prima facie* case of anticipation or obviousness, Applicant should not be required to file an appeal brief and consume the resources of the Board of Patent Appeals. Instead, this case should be allowed now. Applicant respectfully requests a Notice of Allowance as early as possible.

Respectfully submitted,
CARLSON, GASKEY & OLDS

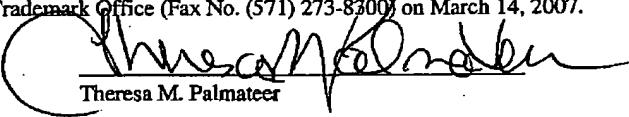
By: 

David J. Gaskey
Registration No. 37,139
400 W. Maple Rd., Ste. 350
Birmingham, MI 48009
(248) 988-8360

Dated: March 14, 2007

CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request for Review, relative to Application Serial No. 10/564,873 is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on March 14, 2007.



Theresa M. Palmateer

N:\Clients\OTIS ELEVATOR\IP00250\PATENT\Pre-Appeal Brief Request for Review 3-07.doc